

WATER DISTRIBUTION MAIN EXTENSIONS

**Gerald Wuetcher
Deputy General Counsel
Public Service Commission
(502) 564-3940 X259
gerald.wuetcher@ky.gov**

DISCLAIMER

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Order Of Presentation

- Review Admin Reg 807 KAR 5:066, §11
- Compare Regulation To Other Extension Policies
- Possible Tariff Revisions To Lessen The Adverse Financial And Administrative Effects Of 807 KAR 5:066, §11
- Contract Drafting Issues

Why This Topic?

- Continued & Growing Movement to Rural Areas
- Failure of Administrative Case 385 to Resolve Issues
- Recent Requests for Deviations

Key Points

- Current Regulation Tries To Balance Competing Interests
- All Or Nothing Approach Does Not Serve The Best Interests Of Water Utilities
- Water Main Extension Rules And Contracts Can Better Protect Utility's Interests

Duty To Serve

Duty to Serve

“We conceive that the duty of a public utility under the general public utility statutes is to render adequate, efficient and reasonable service . . . within the scope or area of service provided for in its certificate of convenience and necessity. It can be compelled to make any reasonable extension of its service facilities within its certificated scope or area of service.

City of Bardstown v. Louisville Gas & Electric Co.,
383 S.W.2d 918, 920 (Ky.1964)

Duty to Serve

KRS 278.030(3) states:

“Every utility shall furnish adequate, efficient and reasonable service . . .”

Duty to Serve

KRS 278.280(3) states:

“Any person or group of persons may come before the commission and by petition ask that any utility subject to its jurisdiction be compelled to make any reasonable extension. The commission shall hear and determine the reasonableness of the extension, and sustain or deny the petition in whole or in part.”

Duty To Serve – Duty to Make Extensions/Provide For Growth

“The burden assumed thereby was a community service; it was not limited to the establishment of a system suitable only to the then current needs. Included also was the utility's duty to keep in view the probable growth of the township, both in population and in structural development, and to make gradual extensions of its mains to meet the reasonable demands that would inevitably result.”

Board of Fire Com'rs of Fire Dist. No. 3, Piscataway
Tp. v. Elizabethtown Water Co, 142 A.2d 85, 87
(N.J. 1958).

Duty To Serve – Water Districts

OAG 75-719:

“water district is under an obligation to serve all inhabitants . . . within its geographical area of service as fixed under KRS 74.010 and as defined by the certificate of convenience and necessity”

What Is A Reasonable Extension?

OAG 79-719:

“[R]easonableness . . . can be measured in terms of the certificated area, the new area to be served, the need and cost of such extension, the financial impact [including return in revenue] of the extension upon the public service company, and the impact upon the total service available to the general public of the certificated areas. The interest of a few must be carefully weighed against the interest of the general public in the Certificated areas of service.”

Current PSC Regulation

Administrative Regulation

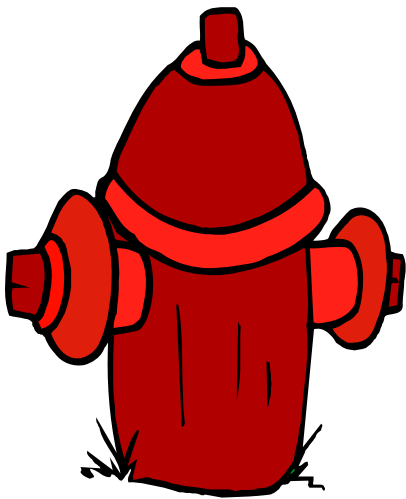
807 KAR 5:066, §11

807 KAR 5:066, §11(1)

Normal Extensions

An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more.

Normal Extension



50 feet or less



807 KAR 5:066, §11(1)

Normal Extensions

WHY 50 FEET?

- Size Of Normal Residential Lot = 50 Feet
- Cost Of 50 Feet Of Main = Revenue
Produced By An Average Customer Over
Specified Period

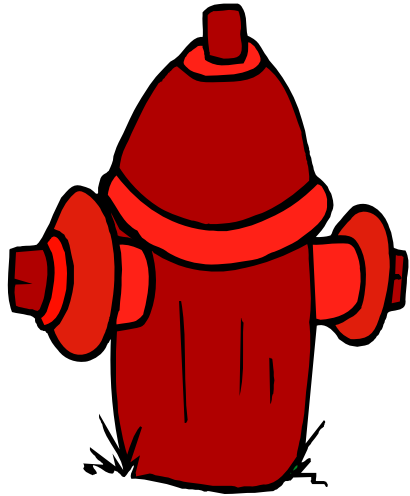
807 KAR 5:066, §11(2)(b)(1):

Normal Extensions Beyond 50 Feet

- Utility Is Responsible for Cost of 50 Feet of Extension Per Applicant
- Utility May Require Applicant to Contribute the Cost of Extension in Excess of 50 Feet
- For 10 Years Following Extension, Utility Must Refund to Applicant the Cost of 50 Feet of Extension for Each Applicant Connecting to the Main Extension Until Full Contribution Refunded.
- Persons Who Subsequently Connect Make No Contribution

Normal Extensions Beyond 50 Feet

Example:



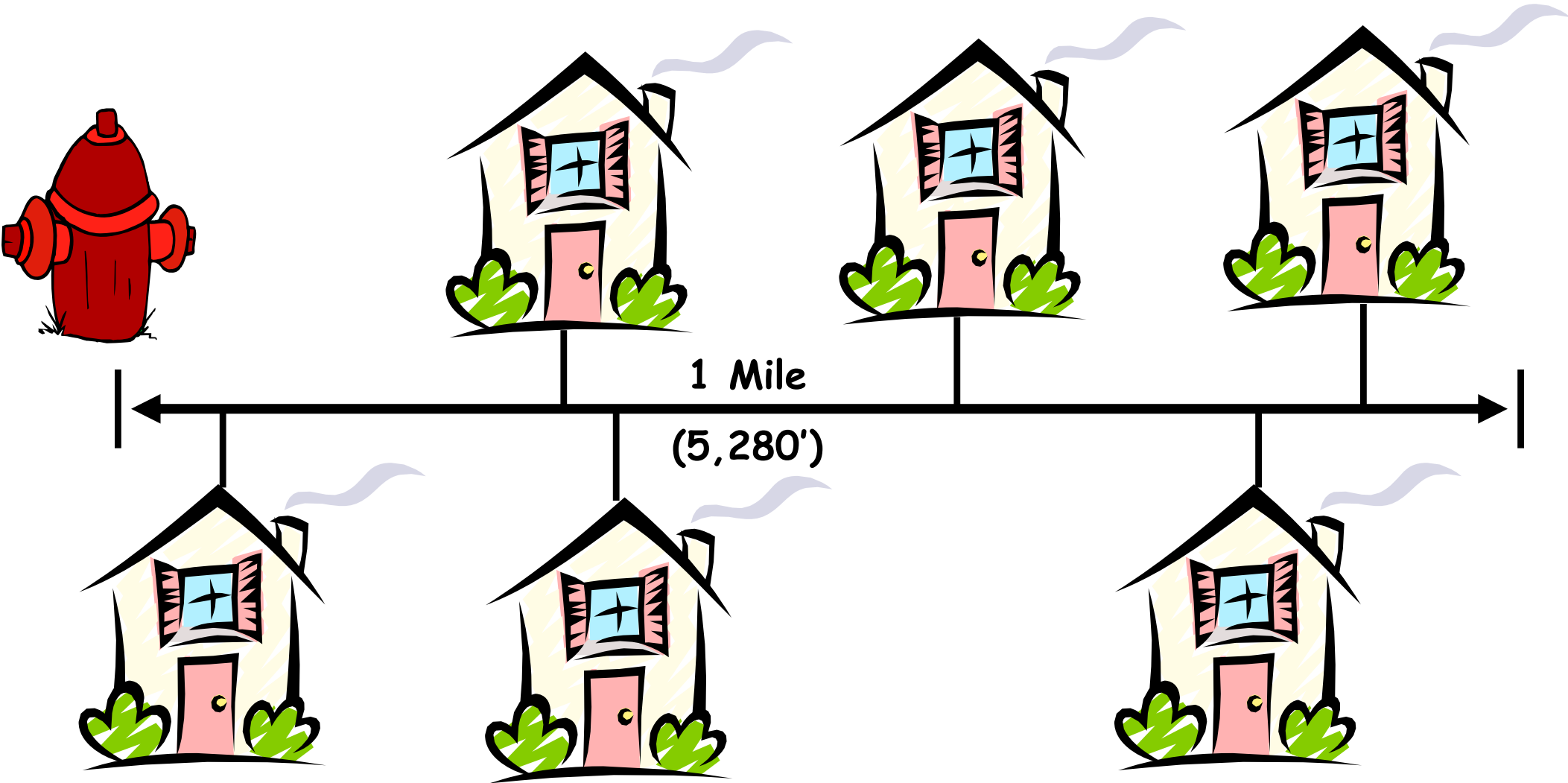
1000 feet



Example

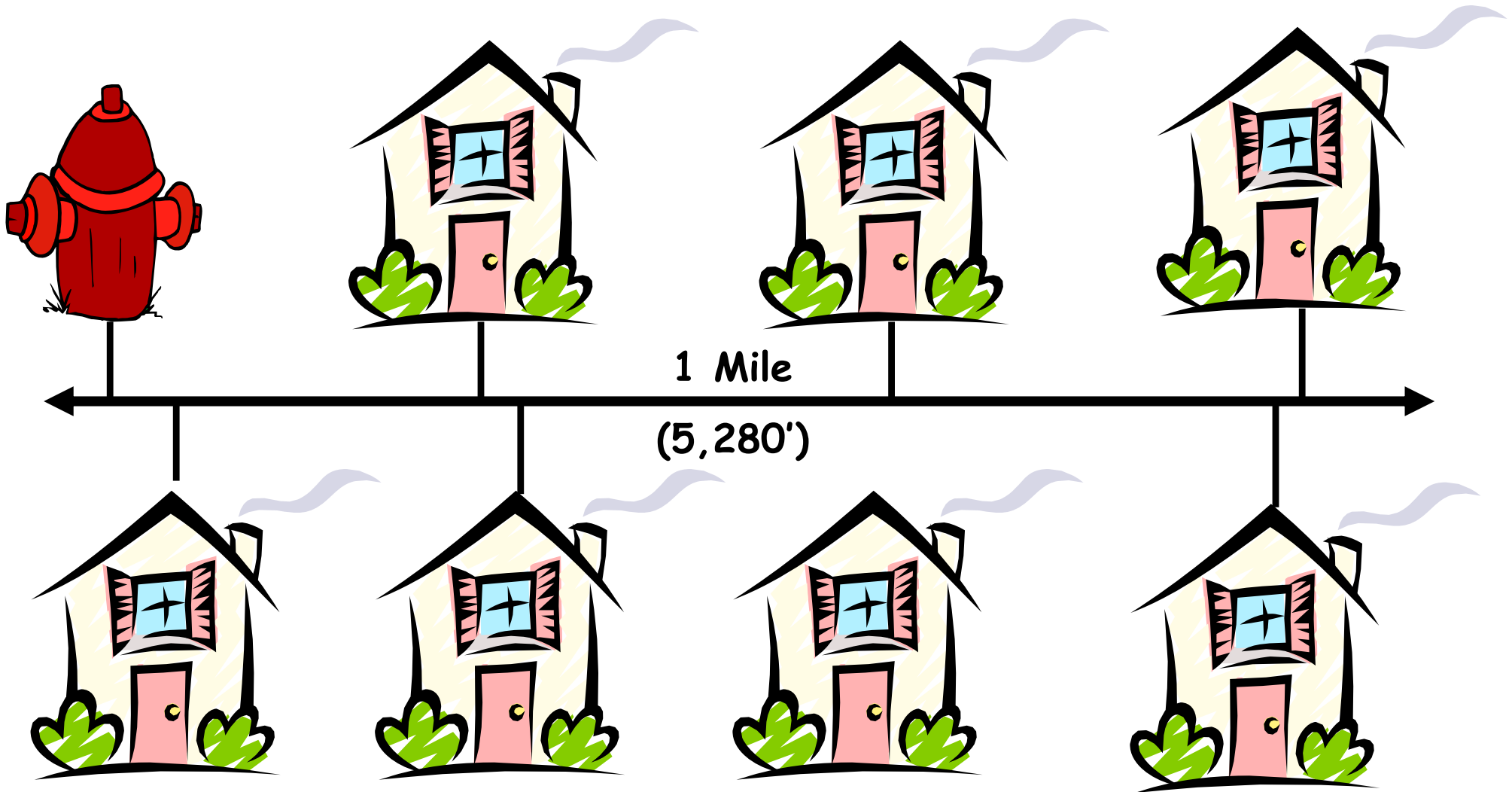
- Total Footage = 1,000 feet
- Total Cost = \$8,000 or \$8 per ft
- Utility's Responsibility = \$400 (\$8 per ft x 50 ft)
- Customer's Responsibility = \$8,000 - \$400 or \$7,600
- Over Next 10 Years, Utility Pays Applicant \$400 for Each Customer Connecting Until \$7,600 Refunded

Normal Extensions for Group



Example

- Total Footage = 5,280 feet
- Total Cost = \$42,240 or \$8 per ft
- Utility's Responsibility = \$2,400 (\$8 per ft x 50 ft x 6 Applicants)
- Applicants' Responsibility = \$42,240 - \$2,400 or \$39,840
- Each Applicant's Share = \$6,640 (\$39,840 ÷ 6)



EXAMPLE:

One Additional Customer Connection

- Additional Customer Makes No Contribution
- Utility Must Refund \$400 To Group of Original Applicants
- Total Refund To Each Member of Original Group = \$66.66 ($\$400 \div 6$ members) or \$8 per ft

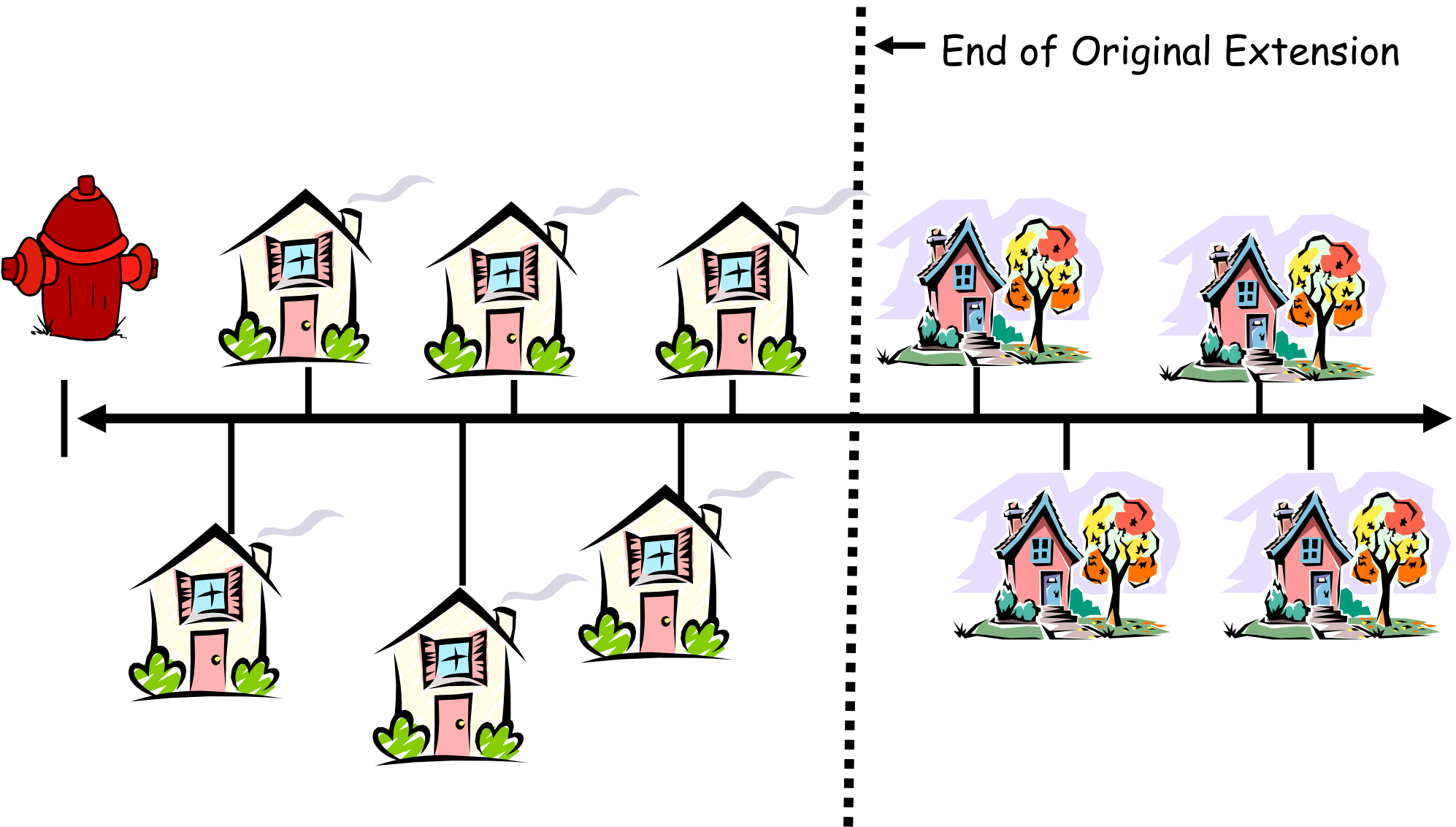
Extensions of Existing Water

Main Extensions

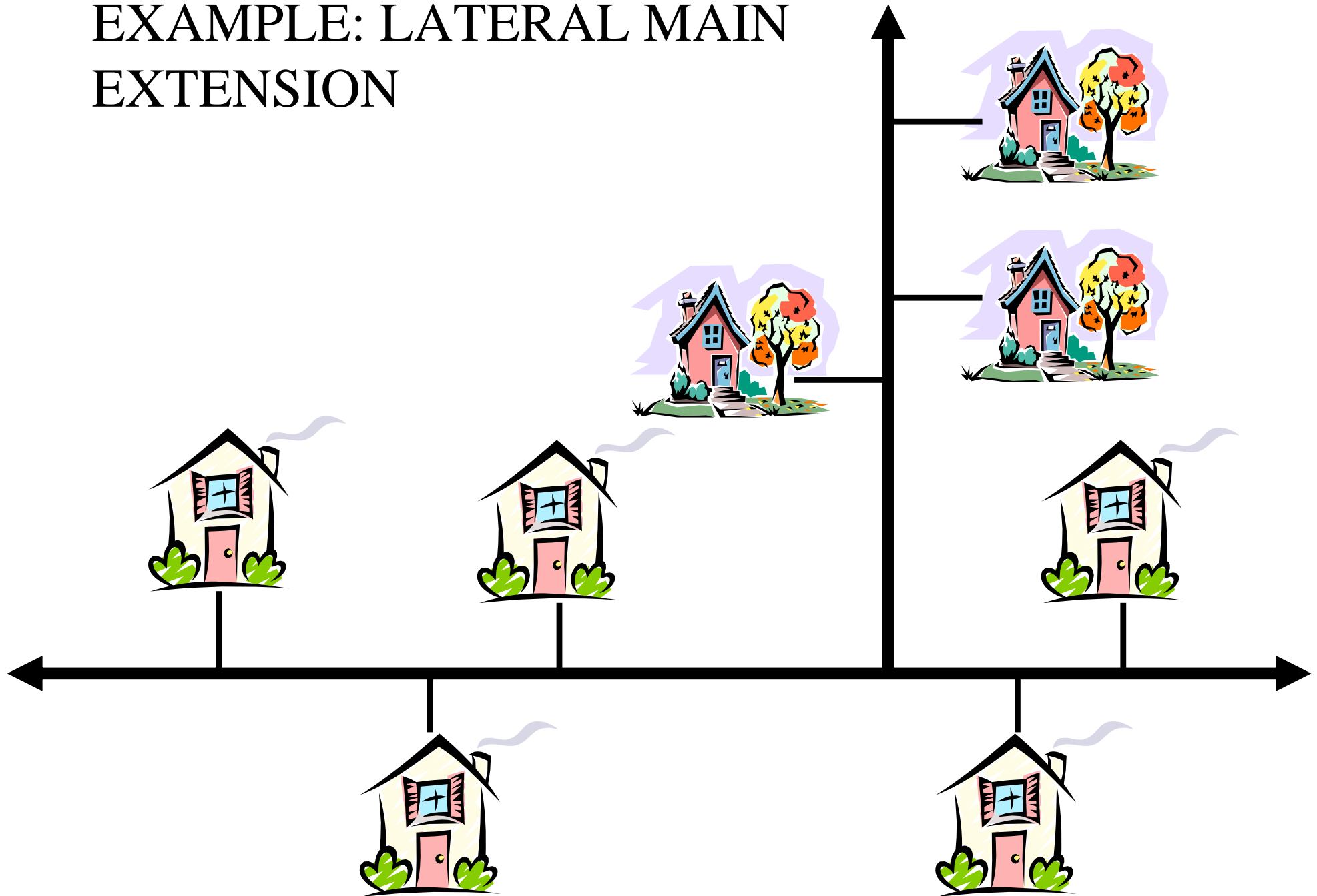
- Utility is obligated to refund contribution only for connections directly to water main extension
- No refund is due to applicants for extension of of an existing extension
- No refund is due for lateral mains to extension

EXTENSION OF EXISTING WATER MAIN

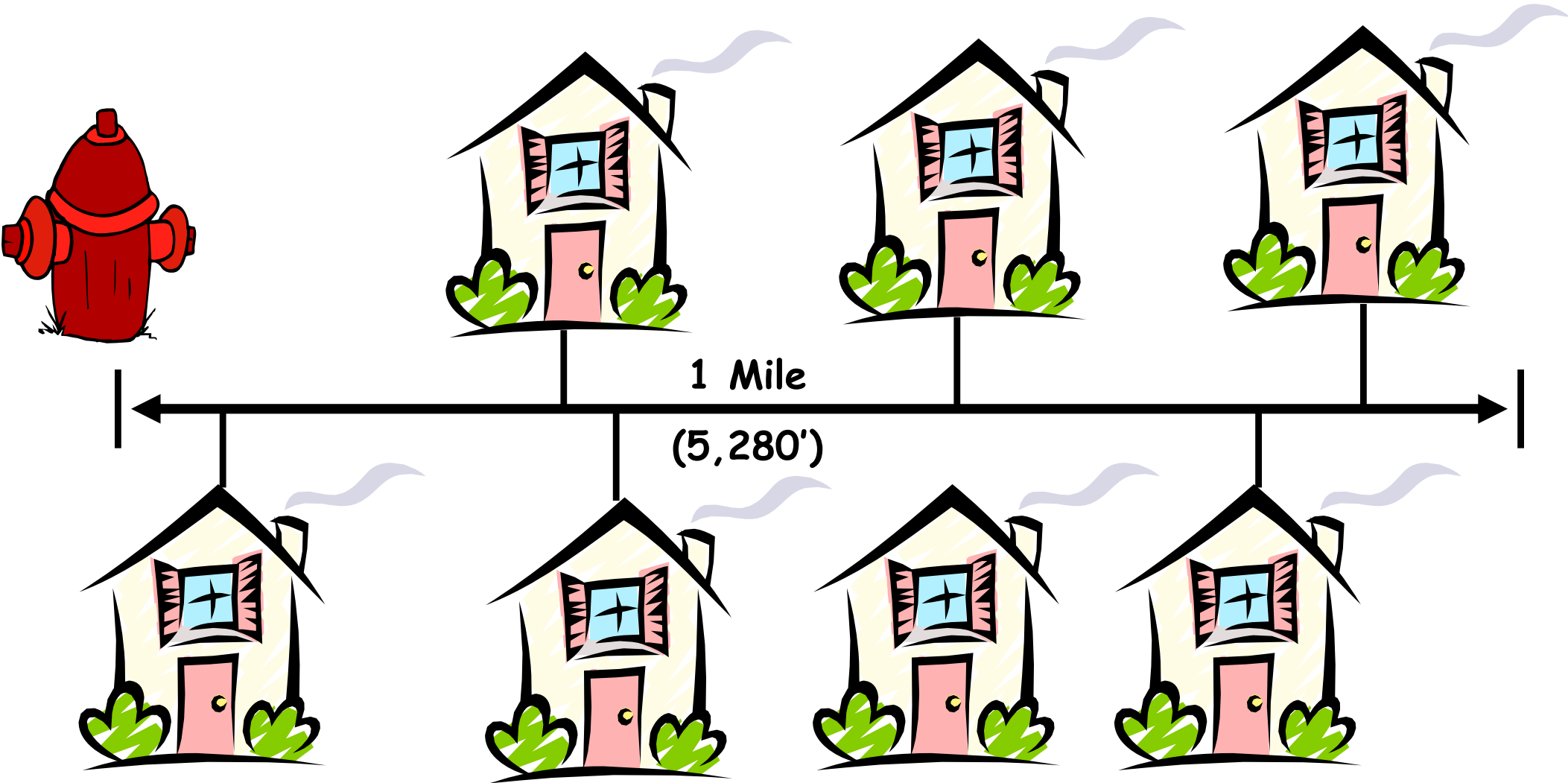
EXTENSION: AN EXAMPLE



EXAMPLE: LATERAL MAIN EXTENSION



Alternative Refund Plan



Alternative Refund Plan

807 KAR 5:066, §11(2)(b)(2)

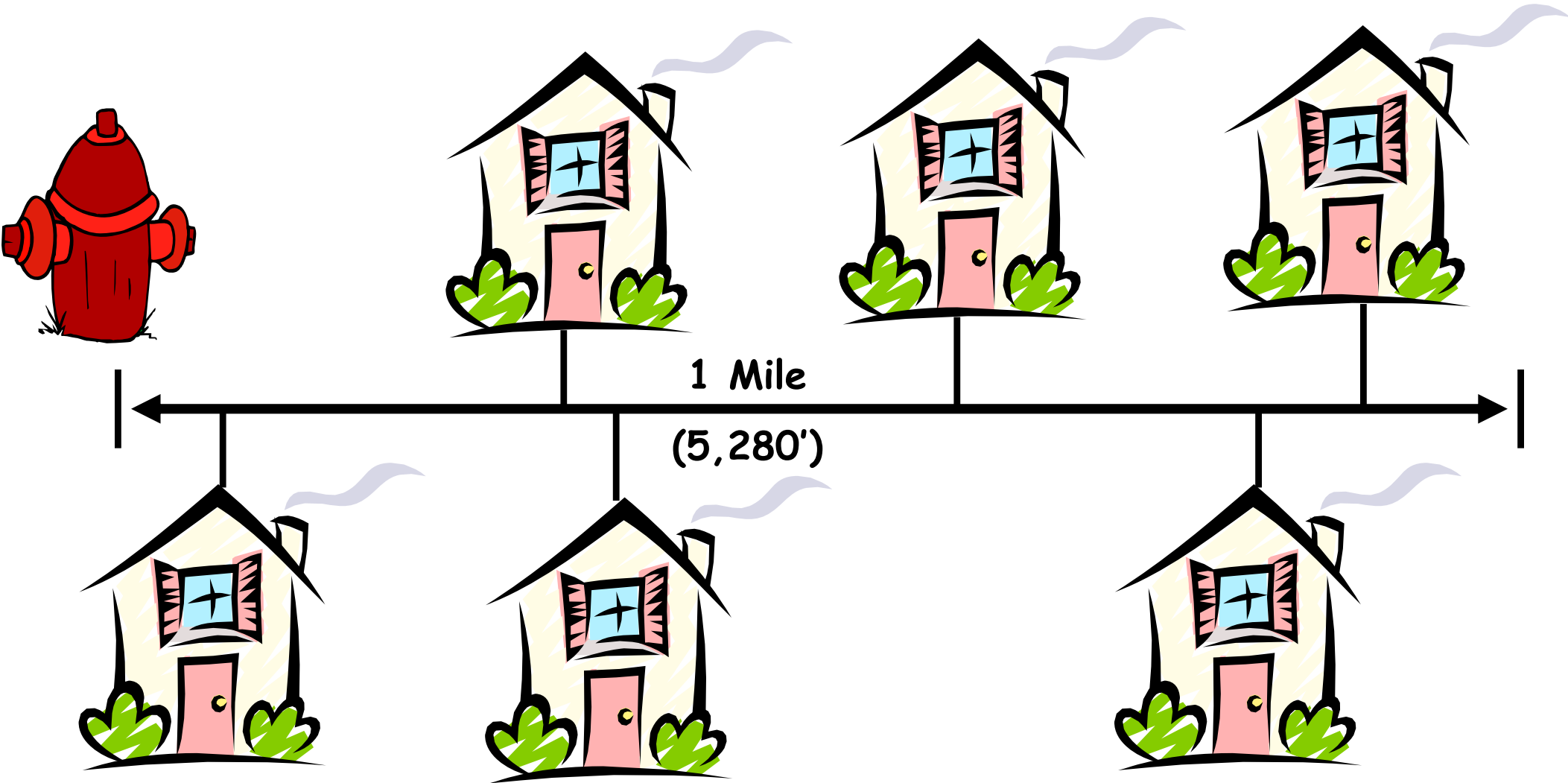
- Utility Is Obligated to Refund the Cost of 50 ft of Main Extension Per Applicant
- Utility Must Refund the Cost of 50 Ft of Main Extension for Each Additional Person Connecting During the 10 Years Following Construction
- Each Person Connecting Directly to Extension for 5 Years After Construction Pays a Pro Rata Share of Applicants' Total Contribution
- All Connections Made During the First 5 Years Equally Contribute to the Cost of the Main Extension

Alternative Refund Plan

807 KAR 5:066, §11(2)(b)(2)

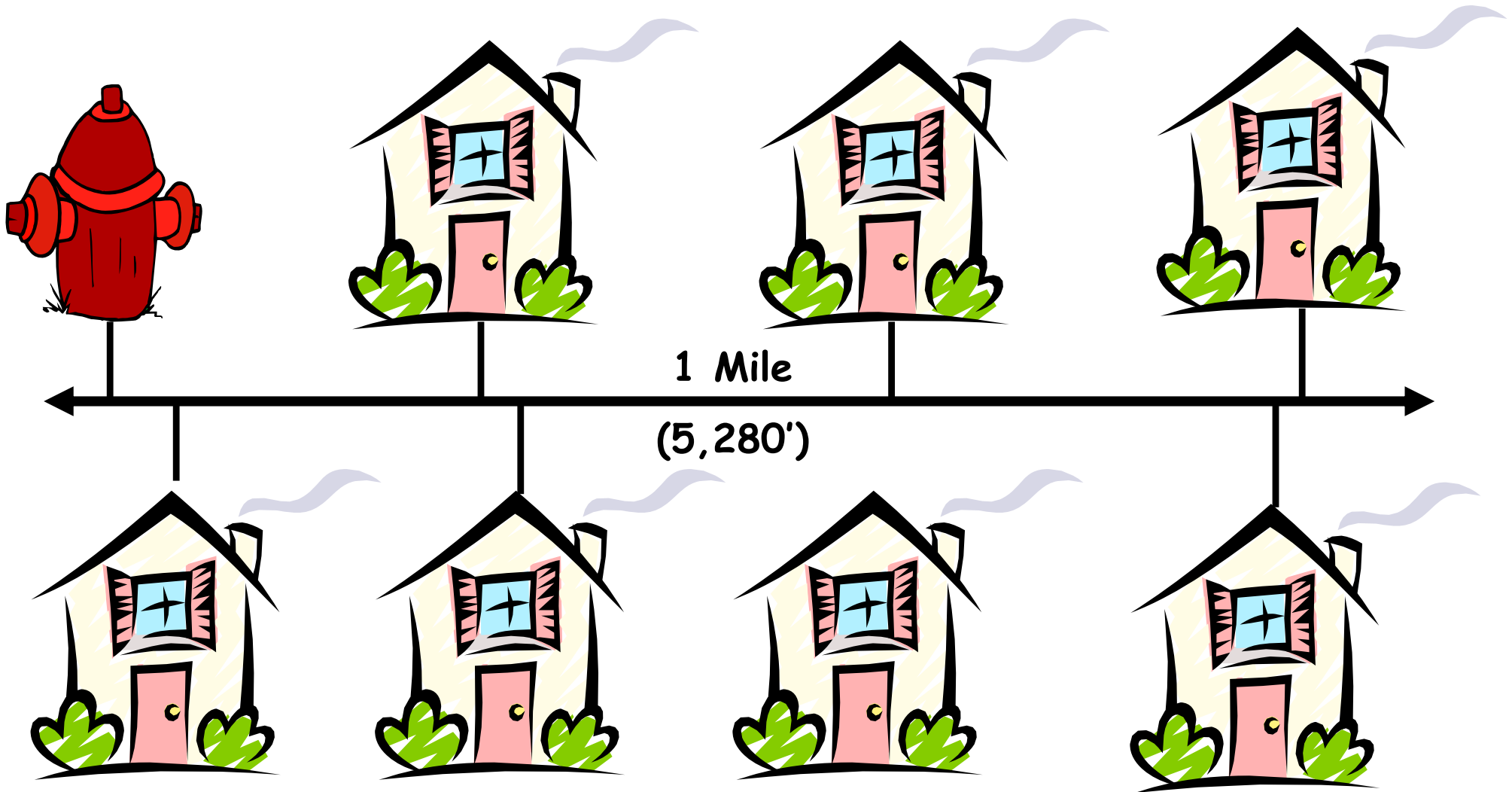
- Eliminates the Free Rider Problem
- Utility Must Affirmatively Elect to Follow Alternative Plan
- Utility Tariffs Must Contain the Alternate Plan

Alternative Plan: An Example



Example

- Total Footage = 5,280 feet
- Total Cost = \$42,240 or \$8 per ft
- Utility's Responsibility = \$2,400 (\$8 per ft x 50 ft x 6 Applicants)
- Applicants' Responsibility = \$42,240 - \$2,400 or \$39,840
- Each Applicant's Share = \$6,640
($\$39,840 \div 6$)
- No Difference In Initial Contribution



EXAMPLE:

One Additional Customer Connection

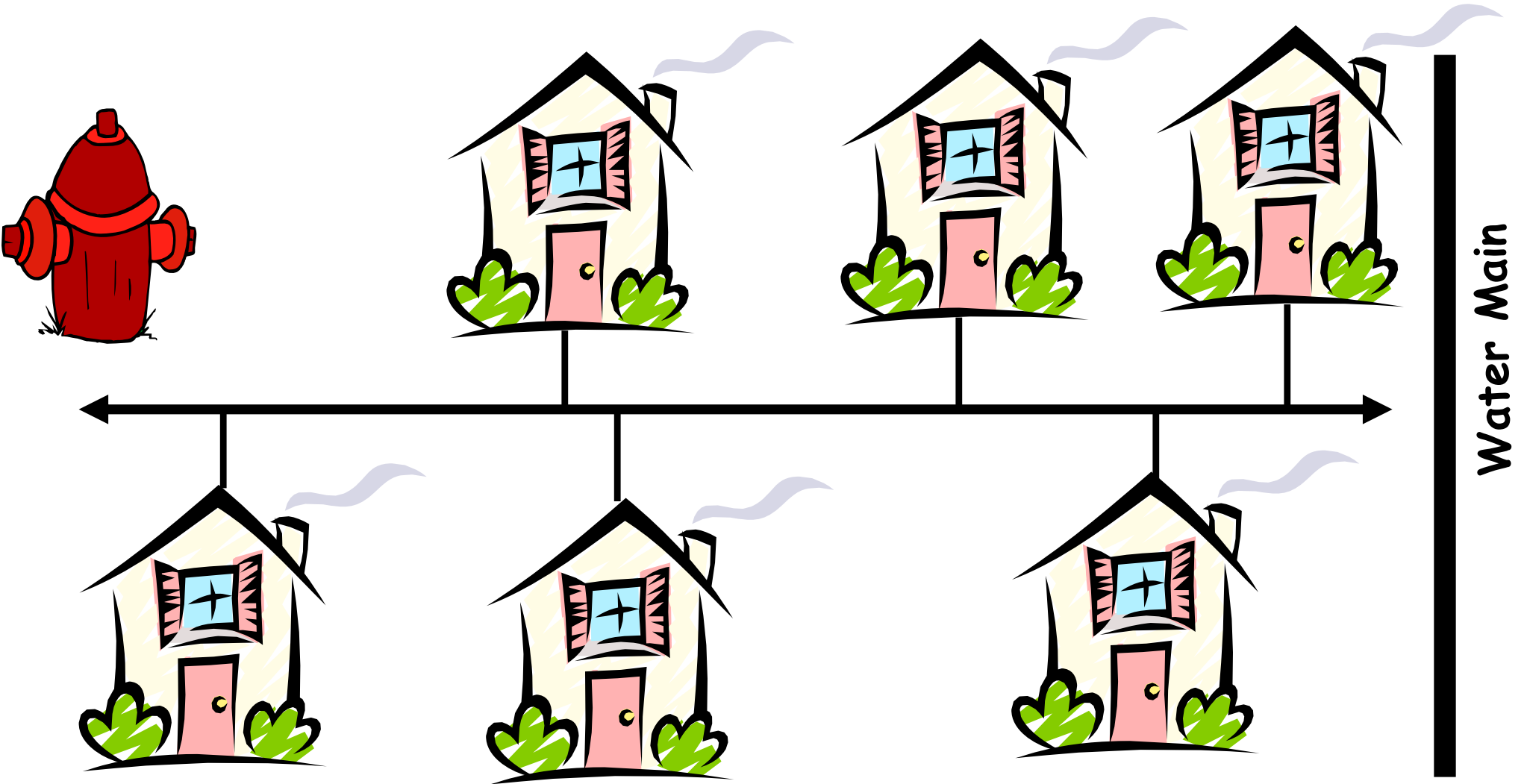
- Utility Contributes An Additional \$400 Towards the Cost of the Extension (Total Utility Contribution Is Now \$2,800)
- Total Applicant Contribution = \$39,440 ($42,240 - \$2,800$)
- Each Applicant's Share = \$5,634.29 ($\$39,440 \div 7$)
- New Customer Must Contribute \$5,634.29 Towards The Cost of the Main

EXAMPLE:

One Additional Customer Connection

- Utility Refunds Must Refund \$1,005.71 Each Original Applicant
- When Next Customer Is Added, the 7th Customer Will Be Considered As an Original Applicant

Real Estate Subdivision



Real Estate Subdivision Extensions

807 KAR 5:066, §11(3)

- Utility May Require a Developer to Pay the Entire Cost of the Extension
- Each Year for a Period Not Less Than 10 Years, Utility Must Refund the Cost of 50 Ft of Main Extension for Each New Customer Who Is Directly Connected to the Extension
- Refunds May Not Exceed the Cost of the Extension

Real Estate Subdivision Extensions: **Arguments In Opposition**

- Permits Developers to Unfairly Recover Costs Twice
- Reduces a Water Utility's Ability to Control Its Financial Future – Accelerated Payment of Costs of Facilities
- Increases General Rates
- Overly Generous When Compared to Other States

Real Estate Subdivision Extensions:

Arguments In Favor

- Water Utilities Have Duty To Make Reasonable Extensions
- No Burden on Water Utilities – Utilities Receiving an Interest-Free Loan from Developers
- Water Utilities Should Pay for the Distribution Facilities Used to Generate Revenues
- No Double Recovery: Market Forces Determine the Cost of Home
- Equal Protection Under the Law

807 KAR 5:066, §11

Other Provisions

- Utility May Make Extensions Under Different Arrangements If Prior PSC Approval Obtained
- Utility May Make at Its Own Expense Greater Extensions Than Those Required Provided Like Free Extensions Are Made to Other Customers Under Similar Conditions
- PSC Reserves Right to Require Greater Extensions Upon Complaint Where An Extension of Only 50 Ft Would Be Unreasonable

Determining The Cost Of The Extension

- Cost of Materials
- Cost of Labor
- Design Costs
- Regulatory Approval Costs
- Non-Water Main Facilities (E.g., Pumps, Storage Tanks)
- Easement Costs
- Use of Separate Fees

Determining The Cost Of The **Extension: Easements**

- 807 KAR 5:006, Section 5(3)
- Utility is responsible for obtaining easements and rights-of-way necessary to extend service
- No utility shall require a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service.
- The cost of obtaining easements or rights-of-way shall be included in the total perfoot cost of an extension
- The cost of obtaining easements or rights-of-way shall be apportioned among the utility and customer in accordance with 807 KAR 5:066, Section 11.

Other Extension Methods

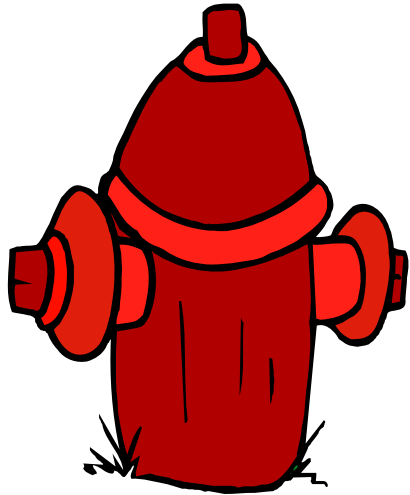
Municipal Water Main Extensions

KRS 96.539

- Municipal Utility May Require Applicants to Pay All Or Part of the Cost of The Extension
- Where Applicant Payment Is Required, the Cost of Any Extension in Excess of 100 Feet Per Applicant Is Subject to Refund on a Prorata Basis for Each Additional Customer Whose Service Line Is Directly Connected to the Extension
- Refund Shall Extend For 10 Years
- Refund Shall Not Exceed the Cost Paid

Municipal Water Main Extensions

Example:

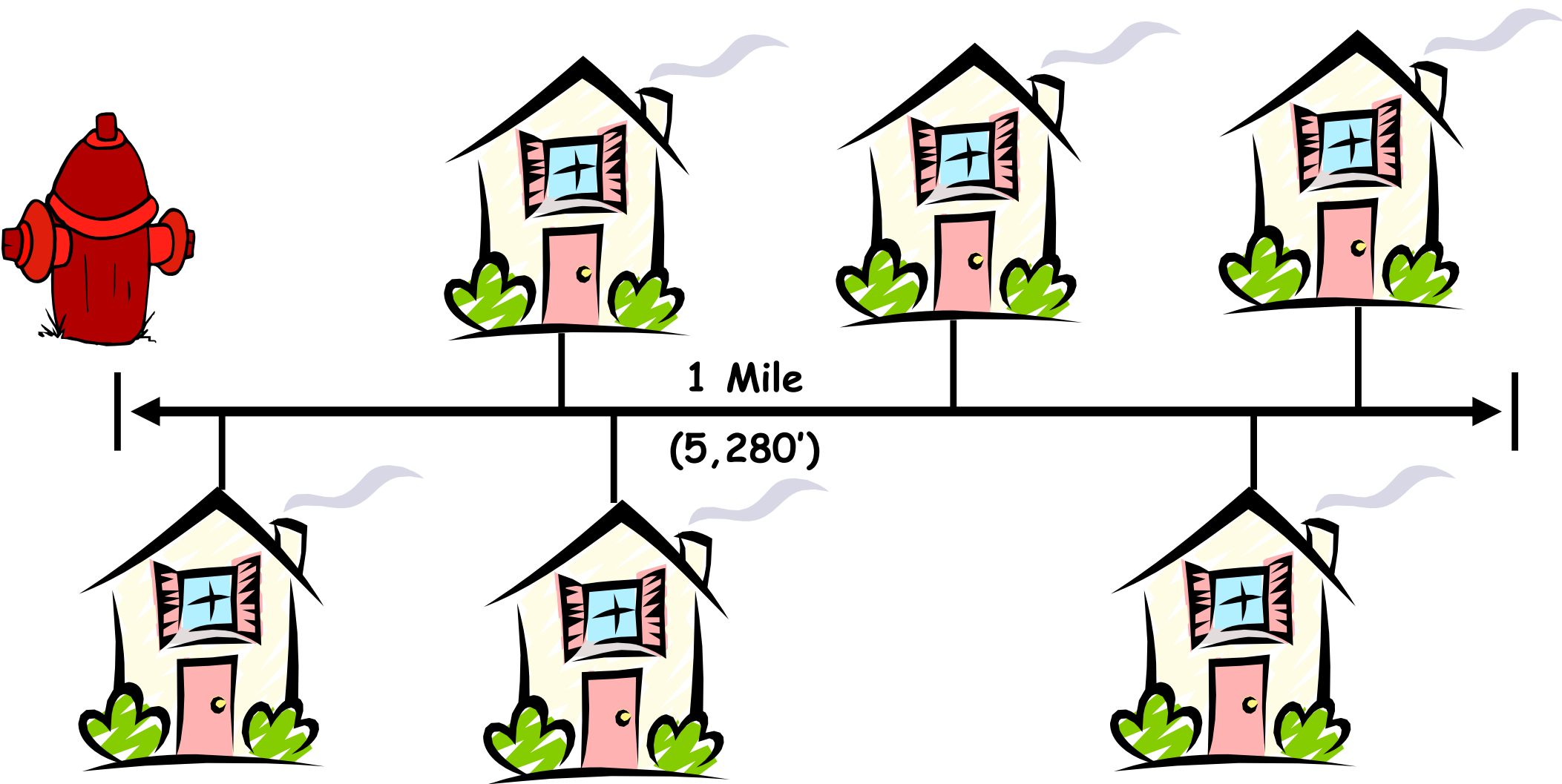


1000 feet



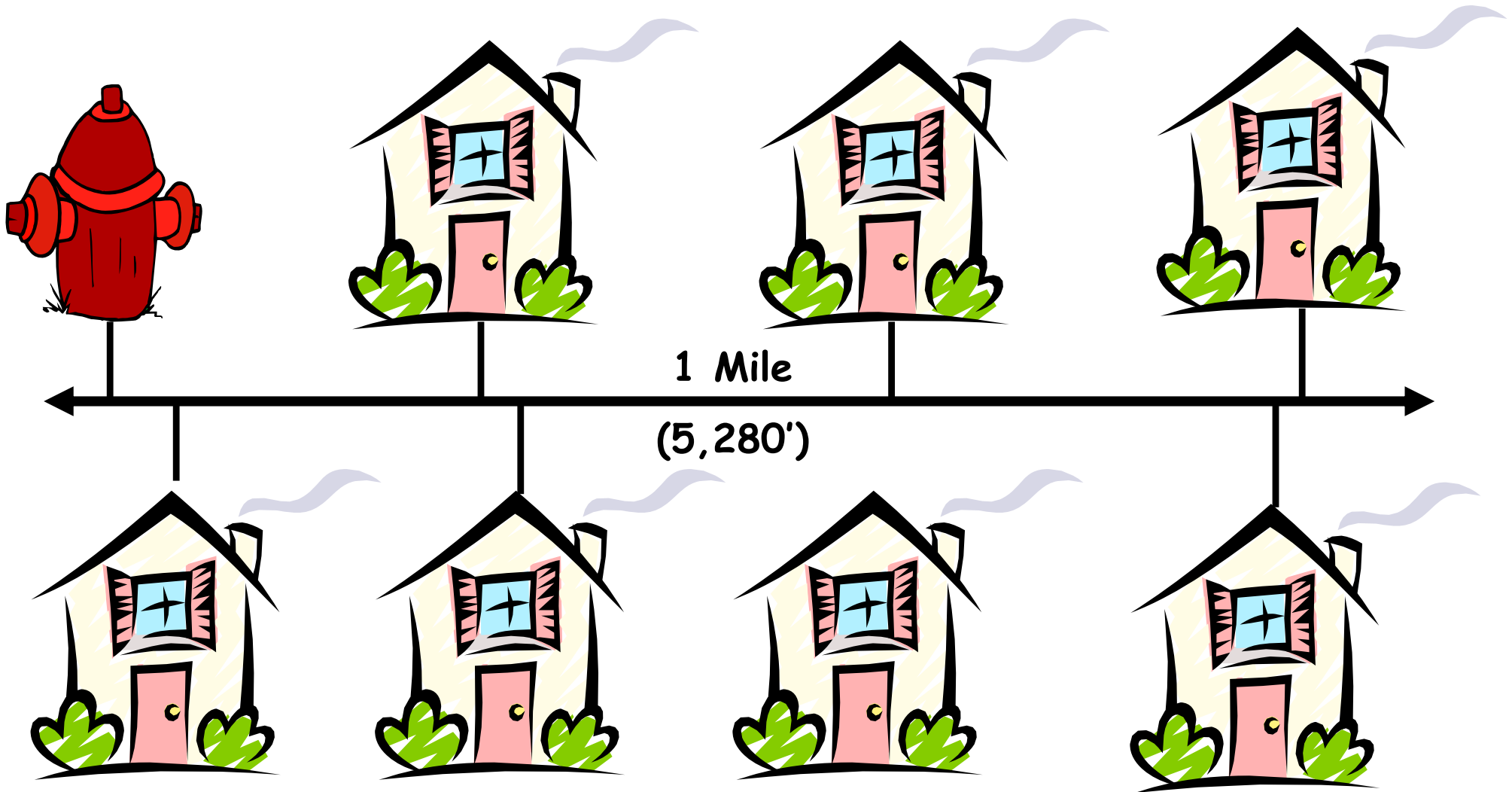
- Total Footage = 1,000 feet
- Total Cost = \$8,000 or \$8 per ft
- Municipal Utility's Responsibility = \$0
- Customer's Responsibility = \$8,000
- Over Next 10 Years, Municipal Utility Pays Applicant \$800 for Each Customer Connecting Until \$7,600 Refunded

KRS 96.539: Extension for Group



Example:

- Total Footage = 5,280 feet
- Total Cost = \$42,240 or \$8 per ft
- Utility's Responsibility = \$0
- Applicants' Responsibility = \$42,240
- Subject to Refund = $\$42,240 - (6 \times \$800) = \$37,440$



EXAMPLE:
One Additional Customer Connection

- Additional Customer Makes No Contribution
- Utility Must Refund \$6,034 ($\$42,240 \div 7$) To Group of Original Applicants
- Total Refund To Each Member of Original Group = \$1,006 ($\$6,034 \div 6$ members)

Other States

ARIZONA

- Utility may require applicant to pay the estimated reasonable cost of all mains
- Refunds made over 10-year period
- Refund shall be at least equal to 10% of the total gross annual revenue of water sales to each customer whose service line connected to extension
- Bidder's List – Utility Required to Provide Extension at Lowest Conforming Bidder's Bid

INDIANA

- Utility shall make extension to applicant at no charge if cost of the extension is not greater than 3X “estimated annual revenue from applicant minus cost of connection”
- If extension does not qualify as “free extension”, applicant deposits the entire cost minus immediate revenue allowance.
- Additional customers connecting within 10 years pay a subsequent connector fee (a pro rata share based upon number of lots to be served)
- Pro rata share contributed is refunded to prior customers connected to extension

IOWA

- If estimated construction cost is less than 5X estimated annual revenue to be generated, utility assumes total cost of extension
- If less than 5X, applicant deposits total cost less 5X estimated annual revenue
- 10-year refund period
- Refunds
 - All is refunded when 3X estimated annual revenue from all added customers is greater than construction cost
 - If 3X estimated annual revenue from all customers is less than total cost, refund = 3X estimated annual revenue of the customer added

MARYLAND

- Customers pay cost of extension in excess of 3X estimated annual revenue to be derived from extension
- When additional customers connect, utility refunds to original applicants 3X estimated annual revenue from new connection
- 10-year refund period
- Subdivisions advance full amount, eligible for refunds when customers connect

NEW YORK

- Utility assumes the cost of 75 feet per applicant
- If extension exceeds 75 feet per applicant, applicant (& subsequent customers) pay a surcharge of 19% per annum of the cost of the excess portion for a period of 10 years
- Real Estate Subdivision Developments
 - Full advance
 - 5-year refund period
 - Cost of 75 feet of extension refunded per connection

NORTH CAROLINA

- Customer advances cost of extension in excess of 100 feet
- When additional customers connect, utility refunds to original applicants cost of 100 feet
- 5-year refund period
- Refunds made for lateral connections/extensions on extensions Subdivisions advance full amount, eligible for refunds when customers connect

OHIO

- Customer advances total cost of extension
- When additional customer connects, utility refunds to original applicant(s) 20% of total gross annual revenue from new customer
- 15-year refund period

OKLAHOMA

- Customer advances total cost of extension in excess of cost of 100 feet
- When additional customer connects, utility refunds to original applicant(s) the cost of 100 feet
- 10-year refund period
- Real Estate Developer required to advance full amount; eligible for refund of cost of 100 feet for each customer connecting to extension

TEXAS

Utility is required to bear the cost of the first 200 feet of any water main necessary to extend service to an individual residential service applicant within a platted subdivision

Contract/Tariff Revisions:

Making Water Main Extensions More
Acceptable To The Water Utility

Fill-in The Details

- Who May Make Extensions?
- How Are Extensions Made?
- What Are The Water Utility's Obligations?
- What Are The Applicant's Obligations?
- When/Who/How Of Refunds

Who Makes The Extension?

- Applicant or Utility?
- Tariff should specify whether the Utility has the exclusive right to construct the extension
- Proposal: Use of Bidding Process – Water Utility must bid project, but retains the right to build at the lowest acceptable bid

Utility Designs/Builds

- Who Designs?
- Who Retains Engineer/Professional Services?
- Deposit For Cost Of Design/Construction
- Responsibility For Costs – What Costs?
- Who Obtains All Necessary Approvals?
- Access To Development
- Location Of The Water Mains – Who Decides?
- Who Prepares Easement Documents?

Applicant Designs/Builds

- Utility Review/Approval Of Preliminary Designs
- Applicant's Obligation To Accept Utility's Proposed Changes
- Professional Requirements For Designer
- Utility Access To Construction Site
- Acquisition Of Zoning/Regulatory Approvals
- Advising Utility Of Construction Schedule

Applicant Designs/Builds

- Utility Inspection Of Water Mains/Testing Of Water Mains
- Notice Of Covering Of Mains/Testing Of Mains
- Easements
- Furnishing Of As-built Plans
- Utility Right To Reject Facilities/Preliminary Acceptance
- Warranty Period
- Performance Bond – Should Developer Post?
- Performance Bond – How Much?
- Date For Final Acceptance
- Statement Of Costs
- Refunds To Developer/Contributor

Refunding

- Apply a Refund Date for All Extensions
- Define “customer connected”.
- Define when the refunding period begins (date of completion of construction or placement of line in service).
- Require Applicant to maintain a current address with the water utility.
- Prohibit assignment or transfer of rights

Refunding

- Length of the Refund Period (Must be at least 10 Years)
- Procedures for Determining the Cost of the Main Extension

Cost Reimbursement

- Water Utility Incurs Costs Even When Developer Constructs:
 - Design Review
 - Regulatory Review
 - Legal Fees
 - Inspection Fees
- Proposal: Separate Tariff Provisions to Recover These Costs

Alternatives To 807 KAR 5:066,

Section 11

- Regulation allows for Deviations for Good Cause Shown
- Deviation for A Specific Case
- Total Deviation – Elimination
- Deviation from Refunding Provisions
 - Period Less than 10 years
 - Less than 50 feet per new connection
 - Different Formula for Refunds
 - Limits on the Amount Refunded Annually

Alternatives To 807 KAR 5:066, Section 11: Making Your Case

- Supporting Evidence
 - How much has previously been refunded?
 - What is the refunding's present effect on Utility's finances?
 - What is the level of current new connections?
 - What is the trend for additional growth? Why?
 - What is expected level of future growth and its effect on the Utility's expenses and revenues?

Alternatives To 807 KAR 5:066, Section 11: Making Your Case

- Supporting Evidence – Continued
 - What is the anticipated effect on Utility Rates if a deviation is not granted?
 - Specific Deviations: Voluntary/Informed Consent
 - Specific Deviations: Prospects for Refunds
- Efforts to Resolve the Problems without Major Revisions

Conclusion